

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

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In Re:

**Mary Downing**

Case No. 09-81667

Chapter 13

Social Security No. xxx-xx-9740

Address:1203 Moreland Avenue, Durham, NC 27707-

Debtor

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**SECOND AMENDED MOTION TO MODIFY PLAN**

**NOW COMES the Debtor**, by and through counsel undersigned, who moves, under authority of 11 U.S.C. § 1329, to modify the Chapter 13 plan in this case, and in support hereof, the Debtor shows unto this Court the following:

1. This case was filed on July 15, 2009, with the Chapter 13 plan being subsequently confirmed on October 8, 2009.

2. The Debtor proposes to modify the Chapter 13 plan in this case in the following respects:

From: \$1,312.00 per month.

To: \$1,312.00 per month through July 2011, followed thereafter by \$1,128.00 per month, starting in November 2011.

3. To facilitate the proposed modification, the Debtor hereby surrenders any interest she may have in collateral securing the following claims:

Creditor and Claim No.	Collateral
National Capital Management/Santander (claim no.3)	Vehicle

4. At the time of the filing of the Debtor's Chapter 13 bankruptcy, the Vehicle had a fair market value of \$5,940.00, requiring adequate protection payments in the amount of \$59.40, or a total of \$1,425.60

5. At the time of the filing of the Debtor's Motion to Modify, National Capital Management/Santander had received a total of \$1993.17, exceeding the depreciation, pursuant to local rule and the Confirmation Order, on the Vehicle.

6. The changed circumstances that justify the proposed modification are as follows:
  - a. The 2005 Toyota Corolla, which is subject to the lien of NCM/Santander, was involved in a motor vehicle accident, and declared a total loss.
  - b. The Debtor has needed to replace her hot water heater.
7. An Amended Schedule I for the Debtor is attached hereto and is incorporated hereto by reference.
8. An Amended Schedule J for the Debtor is attached hereto and is incorporated by reference.
9. Upon information and belief, the insurance proceeds remain in the possession of Nationwide auto insurance.
10. The proposed modification conforms to the standards of confirmation set out in 11 U.S.C. §§ 1322 and 1325. This modification is feasible because of the following changes, as detailed on the attached Chapter 13 Worksheet:
  - a. Surrender of property.
  - b. Change in length of plan.
  - c. Change in equal monthly payment to Citifinancial from \$72.43 to \$75.00.
  - d. Change in the on-going mortgage payment to Beneficial to \$901.26.

**Appended Application for an Additional Attorney Fee**

11. Counsel for the Debtor further applies herein, in accordance with Bankruptcy Rule 2016(b), for approval an attorney fee in the amount of \$250.00 to pay for the reasonable value of the services rendered, and to be rendered, with respect to this motion to modify.
12. Counsel for the Debtors further applies herein, in accordance with Bankruptcy Rule 2016(a), for approval reimbursement for the cost of mailing this Motion to all parties in interest in the amount of \$0.50 per motion for thirty-seven (37) creditors, or total expenses of \$18.50.

WHEREFORE, the Debtor prays that this Court grant her Motion, and modify the Chapter 13 plan accordingly. In addition, counsel undersigned requests that this Court approve a fee in the amount of \$268.50 to compensate undersigned for the services rendered or to be rendered with respect to this motion, said fee to be paid by the Chapter 13 Trustee as an administrative claim in this case.

Dated: September 30, 2011

**LAW OFFICES OF JOHN T. ORCUTT, P.C.**

/s Koury L. Hicks

Koury L. Hicks

North Carolina State Bar No.: 36204

6616-203 Six Forks Road

Raleigh, N.C. 27615

(919) 847-9750

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**CERTIFICATE OF SERVICE**

I, Dawn DeFrangé, certify under penalty of perjury that I am, and at all times hereinafter mentioned was, more than eighteen (18) years of age and that on September 30, 2011, I served copies of the foregoing **SECOND AMENDED MOTION TO MODIFY PLAN** electronically, or when unavailable, by regular first-class U.S. mail, addressed to the following parties:

Richard M. Hutson, II  
Chapter 13 Trustee  
Michael West  
U.S. Bankruptcy Administrator

Mary Downing  
1203 Moreland Avenue,  
Durham, NC 27707-

James W. Sprouse, Jr., Esq.  
Attorney for NCM  
Sprouse & Kurtz, PLLC  
3109 Poplarwood Court, Suite 115  
Raleigh, NC 27604

All creditors with duly filed claims as listed on the Trustee's website

/s Dawn DeFrangé  
Dawn DeFrangé



Debtor(s)

## SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED

Complete this schedule by estimating the average or projected monthly expenses of the debtor and the debtor's family at time case filed. Prorate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate. The average monthly expenses calculated on this form may differ from the deductions from income allowed on Form 22A or 22C.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home)		\$	<b>0.00</b>
a. Are real estate taxes included?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
b. Is property insurance included?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
2. Utilities:		\$	<b>150.00</b>
a. Electricity and heating fuel		\$	<b>48.00</b>
b. Water and sewer		\$	<b>0.00</b>
c. Telephone		\$	<b>178.70</b>
d. Other <b>See Detailed Expense Attachment</b>		\$	<b>50.00</b>
3. Home maintenance (repairs and upkeep)		\$	<b>162.00</b>
4. Food		\$	<b>60.00</b>
5. Clothing		\$	<b>0.00</b>
6. Laundry and dry cleaning		\$	<b>60.00</b>
7. Medical and dental expenses		\$	<b>200.00</b>
8. Transportation (not including car payments)		\$	<b>0.00</b>
9. Recreation, clubs and entertainment, newspapers, magazines, etc.		\$	<b>100.00</b>
10. Charitable contributions		\$	
11. Insurance (not deducted from wages or included in home mortgage payments)		\$	<b>82.00</b>
a. Homeowner's or renter's		\$	<b>0.00</b>
b. Life		\$	<b>0.00</b>
c. Health		\$	<b>125.00</b>
d. Auto		\$	<b>0.00</b>
e. Other		\$	
12. Taxes (not deducted from wages or included in home mortgage payments) (Specify) <b>See Detailed Expense Attachment</b>		\$	<b>20.00</b>
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)			
a. Auto		\$	<b>0.00</b>
b. Other		\$	<b>0.00</b>
c. Other		\$	<b>0.00</b>
14. Alimony, maintenance, and support paid to others		\$	<b>0.00</b>
15. Payments for support of additional dependents not living at your home		\$	<b>0.00</b>
16. Regular expenses from operation of business, profession, or farm (attach detailed statement)		\$	<b>0.00</b>
17. Other <b>See Detailed Expense Attachment</b>		\$	<b>1,299.00</b>
18. AVERAGE MONTHLY EXPENSES (Total lines 1-17. Report also on Summary of Schedules and, if applicable, on the Statistical Summary of Certain Liabilities and Related Data.)		\$	<b>2,534.70</b>
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document: <b>None Anticipated</b>			
20. STATEMENT OF MONTHLY NET INCOME			
a. Average monthly income from Line 15 of Schedule I		\$	<b>2,534.70</b>
b. Average monthly expenses from Line 18 above		\$	<b>2,534.70</b>
c. Monthly net income (a. minus b.)		\$	<b>0.00</b>

Debtor(s)

**SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S) - AMENDED**  
**Detailed Expense Attachment**

**Other Utility Expenditures:**

<b>Cellular Phone</b>	\$	<b>69.00</b>
<b>Cable</b>	\$	<b>74.70</b>
<b>Internet</b>	\$	<b>35.00</b>
<b>Total Other Utility Expenditures</b>	\$	<b>178.70</b>

**Specific Tax Expenditures:**

<b>Personal Property Taxes</b>	\$	<b>10.00</b>
<b>Real Property Taxes</b>	\$	<b>10.00</b>
<b>Total Tax Expenditures</b>	\$	<b>20.00</b>

**Other Expenditures:**

<b>Emergencies/Miscellaneous</b>	\$	<b>100.00</b>
<b>Personal Care</b>	\$	<b>71.00</b>
<b>Monthly Chapter 13 Payment</b>	\$	<b>1,128.00</b>
<b>Total Other Expenditures</b>	\$	<b>1,299.00</b>

# CH. 13 PLAN - DEBTS SHEET

(MIDDLE DISTRICT - STEP PLAN)

Date: 9/2/11

Lastname-SS#: downing-9740 MTM #2

## RETAIN COLLATERAL & PAY DIRECT OUTSIDE PLAN

Retain	Creditor Name	Sch D #	Description of Collateral

## SURRENDER COLLATERAL

Creditor Name	Description of Collateral
National Capital	2005 Toyota

## ARREARAGE CLAIMS ON RETAINED COLLATERAL

Retain	Creditor Name	Sch D #	Arrearage Amount
	Beneficial		\$2,943

## REJECTED EXECUTORY CONTRACTS/LEASES

Creditor Name	Description of Collateral

## LTD - DOT on PRINCIPAL RESIDENCE / OTHER REAL PROPERTY

Retain	Creditor Name	Sch D #	Mortgage Payment	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
	Beneficial		\$901	n/a	n/a	\$901	Residence
				n/a	n/a		
				n/a	n/a		

## STD - SECURED DEBTS (Retain Collateral & Pay FMV Of Collateral)

Retain	Creditor Name	Sch D #	FMV	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
				7.00			
				7.00			
				7.00			
				7.00			

## STD - SECURED DEBTS & 910 CLAIMS (Pay 100%)

Retain	Creditor Name	Sch D #	Payoff Amount	Int. Rate	Adequate Protection	Minimum Equal Payment	Description of Collateral
	Citifinancial		\$2,618	5.25	\$26	\$75	2000 Chrysler
				7.00			
				7.00			
				7.00			
				7.00			

## ATTORNEY FEES (Unpaid Part)

Law Offices of John T. Orcutt, P.C. \$250

## SECURED TAXES

Secured Amount

IRS Tax Liens

Real Property Taxes on Retained Realty

## UNSECURED PRIORITY DEBTS

Amount

IRS Taxes

State Taxes

Personal Property Taxes \$74

Alimony or Child Support Arrearage

COSIGN PROTECT (Pay 100%) Int.% Payoff Amount

All 'Co-Sign Protect Debts (See\*\*\*)

## GENERAL NON-PRIORITY UNSECURED

Amount to Pay\*

DMI = None(\$0)

## PROPOSED CHAPTER 13 PLAN

\$ 1128 /month for 38 months, then

\$ N/A /month for N/A months.\*\*

## Definitions

Sch D # = The number of the secured debt as listed on Schedule D.

Adequate Protection = Required monthly 'Adequate Protection' payment.

\* = Minimum of DMI x ACP, minus all co-sign protect debt.

\*\* = Plan duration is subject to "Duration of Chapter 13 Plan" provision.

\*\*\* Co-sign protect on all debts so designated on filed schedules D, E and F

Final\_MD\_Step (rev. 11/6/07) © Copyright by John T. Orcutt (Page 4 of 4)

## Other Miscellaneous Provisions